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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

FSHR-076/00US

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Application Number

10/697,555

Filed

October 31, 2003

First Named Inventor

Carol D. Snyder

Art Unit

3722

Examiner

Jamila O. Williams

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

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
☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 50,501

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

for  Reg. No. 42887
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March 28, 2007
Date

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Carol D. SNYDER

Examiner: Jamila O. Williams

Serial No.: 10/697,555

Art Unit: 3722

Filed: October 31, 2003

Confirmation No.: 8403

For: **CHILDREN'S ENTERTAINMENT AND DEVELOPMENT TOY**

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ARGUMENTS IN SUPPORT OF PRE-APPEAL REQUEST FOR REVIEW

Applicant submits the following arguments in support of the Pre-Appeal Brief Request for Review filed herewith.

I. Claim Rejections

Claims 1-8, 10, 11, 13-22 and 24-41 stand rejected; however, this request only addresses the rejections of claims 1-8, 10, 11, 13-22, 24, 26, and 30-41.

II. Independent Claim 1 and its Dependent Claims are Patentable over Letzkus and Snyder

The Applicant respectfully submits that the rejection of claim 1 is not supported by the references, because the combined disclosures of the references do not include all of the elements of claim 1. Specifically, independent claim 1 recites “a body having a first end and a second end, the body configured to resemble an animal.” Neither Letzkus nor Snyder, alone or in combination, disclose or suggest such an apparatus.

Specifically, the devices of Letzkus and Snyder are not configured to resemble an animal, nor is there any disclosure in either reference to suggest configuring the devices

to resemble an animal. Further, none of the other references cited by the examiner (e.g., Sommer) disclose or suggest a device configured to resemble an animal as recited in claim 1.

Letzkus discloses an exercising apparatus having an upright box or chute 2 with upper and lower openings (3,8). A user lifts an object 12 and inserts it into the upper opening 3 and then retrieves the object 12 from the lower opening 8 and again lifts up and inserts the object 12 into the upper opening 3. Such movement is meant to provide exercise to the user. The exercising apparatus of Letzkus is referred to as a “box” (col. 1, ll. 35-55) and has a substantially rectangular shape as illustrated in each of the figures. Thus, Letzkus is entirely silent as to resembling any type of animal shape, both in the description and in the figures. Similarly, Snyder does not disclose or suggest an apparatus having a body configured to resemble an animal as recited in claim 1.

In addition, not only do the combined references fail to disclose all of the claim elements recited in claim 1, there is no motivation to combine the teachings of Letzkus with the teachings of Snyder. As stated above, Letzkus discloses an exercising apparatus, whereas Snyder discloses a child's toy. The exercising apparatus of Letzkus is configured to be set up in a room or apartment and is specifically designed to deaden noise when the exercising apparatus is in use. For example, Letzkus states “[a]t the bottom of the chute is the curved block 10 which may be formed of a suitable cushioning material to deaden the sound of the falling ball or other object.” (col. 1, ll. 51-55). In stark contrast, the children's toy in Snyder is configured to generate lights and sounds to entertain a child. Such a teaching is entirely contrary to the teachings of Letzkus. Thus, the Examiner has impermissibly combined the exercising apparatus of Letzkus with the toy of Snyder in an attempt to arrive at the apparatus recited in claim 1.

Lastly, although not specifically cited as a reference by the Examiner in relation to claim 1, the Examiner mentions Sommer on page 3 of the office action. The Applicant submits that Sommer, and the other references cited in the office action, also do not disclose or suggest an apparatus configured to resemble an animal as recited in claim 1.

For example, Sommer discloses a musical toy in the form of a tapering hollow column having (A) an aperture (F) at an upper end for insertion of a ball or marble (E), and an aperture (L) at a bottom of the column for the balls to exit. Thus, the only embodiment of the toy in Sommer has a tapered column shape, and is therefore not configured to resemble an animal as recited in claim 1.

Accordingly, independent claim 1, and claims 2-8, 10, 30, and 33-36 dependent therefrom, are therefore allowable over the applied references.

III. Independent Claim 11 and its Dependent Claims are Patentable over Fitch, Land and Snyder

The Applicant respectfully submits that the rejection of claim 11 is not supported by the references, because none of the references, alone or in combination, include all of the elements of claim 11. Independent claim 11 recites a method including “receiving an object at an input aperture defined at a first end of a channel, the channel disposed within a body having a base configured to support the body on a surface, the base being disposed within a plane, the body configured to resemble an animal.” None of Fitch, Land or Snyder disclose or suggest a method as recited in claim 11.

Specifically, Fitch discloses a dice scrambler 10 that includes a housing body 12 that defines a vertical chute for directing dice 16 from an upper entryway 18 to a lower discharge opening 20. The dice scrambler of Fitch is described and illustrated as having a rectangular configuration and there is no disclosure or suggestion of a body configured to resemble an animal.

Land discloses a game piece randomizer 1 having a tubular housing 2 that defines apertures 12 for inserting obstruction pieces 14. A game piece (e.g., marbles 36) can be passed through the housing and will traverse a path based on the insertion of the obstruction pieces 14. Land discloses the housing having various geometric shapes, such as rectangular, circular, octagon, etc., but does not disclose or suggest the housing being

configured to resemble an animal. Snyder is also silent as to having a body configured to resemble an animal as recited in claim 11.

Accordingly, claim 11, and claims 13-16, and 37 dependent therefrom, are therefore allowable over the applied references.

III. Independent Claim 17 and its Dependent Claims are Patentable over Fitch, Land and Snyder

The Applicant respectfully submits that the rejection of claim 17 is not supported by the references, because none of the references, alone or in combination, include all of the elements of claim 17. Independent claim 17 recites “the guiding structure configured to resemble an animal.” For similar reasons as stated above for claim 11, none of Fitch, Land or Snyder disclose or suggest a guiding structure as recited in claim 17.

Accordingly, claim 17, and claims 18-22, 24, 29, 31, and 38-41 dependent therefrom, are therefore allowable over the applied references.

IV. Independent Claim 32 is Patentable over Fitch, Land and Snyder

The Applicant respectfully submits that the rejection of claim 32 is not supported by the references, because none of the references, alone or in combination, include all of the elements of claim 32. Independent claim 32 recites “the guiding structure configured to resemble an animal.” For similar reasons as stated above for claims 11, 17, and 26 none of Fitch, Land or Snyder disclose or suggest a guiding structure as recited in claim 32.

Accordingly, claim 32 is therefore allowable over the applied references.

VI. Independent Claim 26 is Patentable over Fitch, Land, Snyder and Meling

The Applicant respectfully submits that the rejection of claim 26 is not supported by the references, because none of the references, alone or in combination, include all of the elements of claim 26. Independent claim 26 recites “the body resembling an animal.”

For similar reasons as stated above for claims 11, 17, and 32 none of Fitch, Land or Snyder disclose or suggest an apparatus having a body resembling an animal as recited in claim 26. Further, Meling also does not disclose or suggest such an apparatus.

Meling discloses a device 10 having multiple passages 14 having an entrance 16 and an exit 17. A hinged door 19 is disposed at the exit 17. When a user passes a ball 18 into an entrance 16 with sufficient force, the ball 18 can cause the door 19 to open, allowing the ball 18 to pass out through exit 17. Meling does not disclose or suggest the housing of the device 10 resembling an animal as recited in claim 26.

Accordingly, claim 26 is therefore allowable over the applied references.

CONCLUSION

For the foregoing reasons, the Applicant respectfully requests the panel of Examiners review the final rejection and issue a decision that the pending claims are allowed.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-1283.

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